GENERAL AVERAGE — NATURE, CAUSE, AND MANNER OF SACRIFICE — EFFECT OF INHERENT VICE OF CARGO UPON THE RIGHT TO CONTRIBUTION. — A cargo of garbage tankage took fire by spontaneous combustion. The whole cargo of garbage tankage was destroyed in putting out the fire. The plaintiff insurance company had to indemnify the cargo owner and sued the vessel for a general average contribution. *Held*, that the plaintiff is not entitled to contribution. *Atlantic Mutual Ins. Co.* v. *Schooner W. J. Quillan*, 42 N. Y. L. J. 1821 (U. S. Dist. Ct., S. D. N. Y., Jan., 1910).

This reverses a former decision in the same case discussed in 22 HARV. L. REV. 452.

GIFTS — IMPERFECT GIFT — APPOINTMENT OF DONEE AS EXECUTRIX. — A testator promised that the plaintiff should have £2 a week during her life, and died without altering his intention. The will, of which the plaintiff was executrix, made no such provision. *Held*, that she has no claim against the estate. *In re Inness*, [1910] 1 Ch. 188.

Where an ineffectual release of a debt is made, a leading case has declared that the transaction is completed by the debtor becoming executor under the will of the releasor. *Strong* v. *Bird*, L. R. 18 Eq. 315. And a recent decision following the *dictum* of the earlier case reached the same result where execution was entrusted to one to whom an imperfect gift had been made. *Stewart* v. *McLaughlin*, [1908] 2 Ch. 251. See 22 HARV. L. REV. 60. These holdings must, however, be put upon different grounds. Apart from the question whether an unattested act should control testamentary disposition, it is proper for equity to decline to relieve against a release involved in law merely by the appointment of a debtor as executor, provided such release represents the intent of the testator. See 23 HARV. L. REV. 392. But for equity to act affirmatively and give to a donee an interest prevailing over the legal right of legatees is quite another matter. No decision found in this country hints at such a result. And for declining to extend the doctrine to cases in which the *res* is unspecified or a future transference is contemplated, the principal case is to be commended.

INDICTMENT AND INFORMATION — FINDING AND FILING INDICTMENT — PRESENCE OF EXPERT ACCOUNTANT IN GRAND JURY ROOM. — At the request of the district attorney, an expert accountant accompanied him into the grand jury room while that body was investigating the charge against the defendant. The accountant assisted the district attorney in examining witnesses, and asked a few technical questions. He did not attempt to influence the jurors. No prejudice to the defendant was shown to have resulted from his presence. *Held*, that the indictment must be quashed. *United States* v. *Heinze*, (Unreported) Circ. Ct., S. D. N. Y., Jan. 22, 1910.

A defendant prejudiced by the conduct of grand jury proceedings may have the indictment quashed. *United States* v. *Farrington*, 5 Fed. 343. But as to the presence of an unauthorized person not prejudicing the defendant's rights, the law is in confusion. Generally, a stenographer or bailiff is considered so far an automaton as to be unobjectionable. *State* v. *Bacon*, 77 Miss. 366; *United States* v. *Simmons*, 46 Fed. 65. *Contra*, *State* v. *Bowman*, 90 Me. 363. For the secrecy of the proceedings is said not to be for the defendant's benefit. See *Commonwealth* v. *Mead*, 12 Gray (Mass.) 167; *State* v. *Broughton*, 7 Ired. (N. C.) 96. The presence of a stranger who is an active factor in conducting the proceedings is always considered an error. By some courts it is deemed an error of substance; by others, merely an error of form. The principal case follows the weight of the federal decisions in holding that the defendant has received injury in law by the existence of an opportunity for an outsider to influence the grand jury. *United States* v. *Kilpatrick*, 16 Fed. 765; *United States* v. *Virginia-Carolina Chemical Co.*, 163 Fed. 66. A number of state courts think the defendant is sufficiently protected

as long as the grand jury itself is legally constituted and the proceedings are actually fair, and hold that the technical error of the outsider's presence is not ground for quashing the indictment. *Blevins* v. *State*, 68 Ala. 92; *Bennett* v. *State*, 62 Ark. 516. It is submitted that this error is more properly one of form only, and is therefore cured by the federal statute. See U. S. COMP. ST. (1901) 720, § 1025.

INFANTS — CONTRACTS AND CONVEYANCES — ABATEMENT IN PURCHASE PRICE AT EXPENSE OF INFANTS. — The plaintiff purchased a farm of the defendants. Both the contract of sale and the deed mentioned its contents as "245 acres, more or less." As some of the vendors were infants, the sale was ratified by the court. The plaintiff, later discovering that the farm contained only 235 acres, brought a bill in equity for an abatement of the purchase price. *Held*, that the abatement be allowed. *McComb* v. *Gilkeson*, 66 S. E. 77 (Va.). See NOTES, p. 473.

INJUNCTION — ACTS RESTRAINED — CRIMINAL PROCEEDINGS. —Three plaintiffs brought a bill to enjoin the sheriff and district attorney from prosecuting them under a state liquor law alleged to be invalid. *Held*, that equity will not grant the injunction. *J. W. Kelly & Co.* v. *Conner*, 123 S. W. 622 (Tenn.). See NOTES, p. 469.

INJUNCTION — ACTS RESTRAINED — PASSAGE OF MUNICIPAL ORDINANCES. — The plaintiff sought to restrain the members of the council of the defendant city from passing an ordinance compelling the plaintiff to build viaducts over certain crossings. *Held*, that the injunction should be refused. *Chicago, Rock Island, & Pacific Ry. Co.* v. *City of Lincoln*, 124 N. W. 142 (Neb.). See NOTES, p. 470.

INTERSTATE COMMERCE — CONTROL BY STATES — REGULATION OF RATES ON INTERSTATE FERRIES. — A New Jersey statute of 1799 empowers the boards of chosen freeholders to fix rates to be taken at ferry stations within their respective counties. The board of Hudson County fixed the rates to be taken by ferries plying between that county and New York City. *Held*, that the rates so fixed are valid. *New York Cent. & H. R. R. Co.* v. *Board of Chosen Freeholders*, 74 Atl. 954 (N. J., Ct. Err. & App.).

From a time antedating the Revolution, states have exercised the power of regulating ferries, and no exception has been made in the case of interstate ferries. When the power came to be contested under the federal Constitution, the states held that they had only potentially ceded their jurisdiction to Congress and could therefore continue to exercise it until Congress intervened. *The People* v. *Babcock*, 11 Wend. (N. Y.) 587; *Freeholders of Hudson Co.* v. *State*, 24 N. J. L. 718. The Supreme Court in several cases adopted the same view. *Fanning* v. *Gregoire*, 16 How. (U. S.) 524; *Wiggins Ferry Co.* v. *East St. Louis*, 107 U. S. 365. Later federal cases, however, have encroached upon this doctrine. A state cannot regulate tolls over an interstate bridge. *Covington & Cincinnati Bridge Co.* v. *Kentucky*, 154 U. S. 204. Nor can a state regulate an interstate ferry for railroad cars which is not a ferry in the technical historic sense. *St. Clair County* v. *Interstate Transfer Co.*, 192 U. S. 454. When called upon, the Supreme Court may regard their earlier cases as overruled, but in view of the historic usage, the principal case wisely determined to adhere to the established principle until the Supreme Court should pass upon it directly. The need of some regulation respecting carriers of such general utility and the difficulty of any uniform regulation by Congress argue potently in favor of the established rule.

JUDGMENTS — EQUITABLE RELIEF — DEFAULT DUE TO ILLNESS OF COUNSEL. — In a petition for an injunction to restrain the enforcement of a judgment, the petitioner alleged that he had a complete defense to the action at law, but that his attorney was incapacitated for professional work by sudden illness, that he